

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES G. MITCHELL and LAND )  
 BARON ENTERPRISES, LLC, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

CIVIL ACTION NO. 1:07-cv-00150-SJD

**JOINT MOTION TO APPROVE AND ENTER CONSENT JUDGMENT**

Plaintiff United States of America and Defendants James G. Mitchell and Land Baron Enterprises, LLC (hereinafter "Defendants") jointly file this motion to approve the Consent Judgment between the United States and the Defendants (Attachment A) and sign and enter the Consent Judgment as a Judgment of the Court.

Dated: September 4, 2008.

Respectfully submitted,

For Plaintiff:

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United States Attorney

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Acting Assistant Attorney General  
Civil Rights Division

s/ Erin Meehan Richmond  
STEVEN H. ROSENBAUM  
Chief  
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Deputy Chief  
ERIN MEEHAN RICHMOND  
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For Defendants:

s/ Barry A. Rudell, II  
BARRY A. RUDELL, II  
MATTHEW J. BAKOTA  
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2368 Victory Parkway, Suite 200  
Cincinnati, OH 45206  
Tel.: (513) 961-6200

*Certificate of Service*

I hereby certify that on September 4, 2008 I electronically filed the foregoing Joint Motion to Approve and Enter Consent Judgment with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Barry Alan Rudell, II

Matthew Bakota

Cory Douglas Thompson

James Herbert Ledman

s/ Erin Meehan Richmond  
ERIN MEEHAN RICHMOND  
Trial Attorney  
United States Department of Justice

# Attachment A

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 1:07-cv-00150-SJD
	)	
JAMES G. MITCHELL and LAND	)	
BARON ENTERPRISES, LLC,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT JUDGMENT**

The parties hereby consent to the entry of this Consent Judgment. Accordingly, it is hereby ORDERED, ADJUDGED, AND AGREED as follows:

**I. SCOPE AND TERM OF CONSENT JUDGMENT**

1. The provisions of this Consent Judgment shall apply to Defendants, their employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with any of them.
2. This Consent Judgment is effective immediately upon its entry by the Court. For purposes of this Consent Judgment, the phrases "date of this Consent Judgment" and "effective date" shall refer to the date on which the Court enters the Consent Judgment.
3. This Consent Judgment constitutes a full and final resolution of all claims of violation of the Fair Housing Act that the United States brought or could have brought in this action related to the Defendants' ownership and/or management of the subject properties listed in Appendix A.

## II. ADMISSION OF LIABILITY

4. This action was filed by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Act Amendments of 1988, 42 U.S.C. §§ 3601 *et seq.* The United States alleges that Defendants James G. Mitchell and Land Baron Enterprises, LLC (hereinafter "Defendants") engaged in a pattern or practice of discrimination on the basis of sex, and/or a denial of rights to a group of persons, in violation of 42 U.S.C. § 3614, in the rental of dwelling units the Defendants owned and/or managed in and around Cincinnati, Ohio. Specifically, the United States alleges that Defendant James Mitchell subjected actual and prospective female tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct is alleged to have included, but is not limited to, unwanted verbal sexual advances; unwanted sexual touching; entering the apartment of female tenants without permission or notice; granting and denying tangible housing benefits based on sex; and taking adverse action against female tenants when they refused or objected to his sexual advances; all in violation of 42 U.S.C. §§ 3604 (a), (b), (c) and 3617.

5. The United States further alleges that Defendant Land Baron Enterprises, LLC is liable for the above-described discriminatory conduct of its agent and member, Defendant James Mitchell, because the conduct occurred within the scope of his employment and/or agency.

6. Defendants admit to violation(s) of the Fair Housing Act, 42 U.S.C. §§ 3604 (a), (b), (c) and 3617, and hereby withdraw their previously filed answers, dockets no. 3, 4 and 29.

### III. INJUNCTION

7. Defendants, their agents, employees, successors, and all persons currently in active concert or participation with them, are hereby enjoined from:

- a. Refusing to rent a dwelling unit, refusing or failing to provide or offer information about a dwelling unit, or otherwise making unavailable or denying a dwelling unit to any person because of sex;
- b. Discriminating against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
- c. Making, printing, publishing, or causing to be made, printed, or published any notice, statement or advertisement with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based on sex; or
- d. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by 42 U.S.C. §§ 3603 - 3606.

8. Defendants have represented that Defendant James G. Mitchell does not currently own, rent or manage any residential rental properties. In the event that Defendant James G. Mitchell owns, rents or manages any residential rental property in the future, he shall retain an independent management company, approved by the United States (hereinafter "Management Company"), to manage the rental of any and all residential rental properties in which he has a direct or indirect ownership, management or any other financial interest.

9. Defendant James G. Mitchell shall retain the Management Company within thirty (30) days of his purchase, lease or assumption of control of any residential rental properties and shall continue to retain such company for the duration of this Consent Judgment. If, after retaining an independent management company, Defendant James G. Mitchell wishes to change independent management companies, he may do so, provided that any subsequent management company must also be approved by the United States and comply with the requirements for the Management Company as described in this Consent Judgment.

10. The Management Company shall be responsible for all aspects of management of the future properties that are rented or available for rent, including showing and renting units, making repairs, collecting rents, determining whom to rent to and/or evict, and all other aspects of the rental process.

11. Defendant James G. Mitchell shall refrain from entering the premises of the future properties except that he may do so, when accompanied by a Management Company representative, if it is necessary for him to inspect the property or show it to a prospective buyer and that function cannot be reasonably delegated to an agent. However, in exigent circumstances requiring immediate aid or action, Defendant James G. Mitchell may enter the premises of a future property unaccompanied for the period of the exigency.

12. For the duration of this Consent Judgment that Defendant James G. Mitchell owns, leases or controls any future properties, Defendant James G. Mitchell shall require the Management Company to do the following:

- a. Implement, subject to the United States' approval, a written policy against sexual harassment, including a formal complaint procedure. A copy of this policy and



procedure shall be provided to counsel for the United States within thirty (30) days after the date of entry of this Consent Judgment. This policy and procedure shall be implemented within fifteen (15) days after the United States indicates that the policy and procedure are satisfactory to the United States, and at that time the Manager shall notify all new and current tenants at the future properties of the policy and procedure.

- b. The Management Company shall ensure that all of its employees who will be performing any duties in relation to the future properties are familiar with the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment.
- c. Post an "Equal Housing Opportunity" sign in any rental office through which the future properties are rented, which sign indicates that all apartments are available for rent on a nondiscriminatory basis. An 11-inch-by-14-inch poster substantially equivalent to the Fair Housing Logo, as published in HUD Form 928.1, will satisfy this requirement. Such poster shall be placed in a prominent, well-lit, and easily readable location. Copies of HUD Form 928 are available free of charge by calling HUD directly at 800-669-9777, 800-765-9372, TTY 312-353-7143, or 312-353-7776.
- d. Require that all advertising conducted for any of the future properties in newspapers, telephone directories, radio, television or other media, and all billboards, signs (including at the entrance to the property), pamphlets, brochures

and other promotional literature, include either a fair housing logo, the words

"equal housing opportunity provider," and/or the following sentence:

We are an equal opportunity housing provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability.

The words or logo should be legible and prominently placed.

- e. Send to the United States every six (6) months, a list of all tenants at the future properties and their telephone numbers. Maintain all rental records kept in relation to rental of the future properties, and allow the United States to inspect and copy all such records upon reasonable notice.
- f. Notify the United States in the event it obtains any information indicating that Defendant James G. Mitchell is in violation of this Consent Judgment.
- g. Provide any information reasonably related to compliance with this Consent Judgement that is requested by the United States.

13. Defendant James G. Mitchell shall notify the United States if he or his agent purchases, inherits, or otherwise acquires an interest in any residential rental real estate property. Such written notification<sup>1</sup> shall be made within thirty (30) days after the purchase, inheritance, acquisition, sale or transfer of interest.

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<sup>1</sup> All documents or other communications required by this Consent Judgment to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ # 175-58-227, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. (G Street), Washington, D.C. 20530, or as otherwise directed in writing by the United States. If the Consent Judgment requires transmission by overnight mail, the communication shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ # 175-58-227, U.S. Department of Justice, 1800 G Street NW, Suite 7007, Washington, DC 20006. If the Consent Judgment requires transmission by facsimile, the communication shall be sent via facsimile to (202) 514-1116.

#### IV. COMPENSATION OF AGGRIEVED PERSONS

14. Defendants will pay a total of EIGHT HUNDRED NINETY THOUSAND DOLLARS (\$890,000.00) in compensation for personal injury and emotional distress to persons whom the United States has identified as aggrieved persons. A list of such persons (hereinafter "identified aggrieved persons") identifying the specific amount to be paid to each person is attached as Appendix B. The payment shall be made in two installments as follows:

15. Within fourteen (14) days of the date of this Consent Judgment, Defendants shall pay TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) toward this sum, by delivering to counsel for the United States checks made payable to each such person, in amounts that equal the proportion of their total award as listed in Appendix B.<sup>2</sup>

16. Within thirty (30) days of the date of this Consent Judgment, Defendants shall pay the remaining SIX HUNDRED FORTY THOUSAND DOLLARS (\$640,000.00) to the aggrieved persons by delivering to counsel for the United States checks made payable to each such person, in amounts that equal the remaining proportion of their total award (less the amount paid pursuant to paragraph 15), as listed in Appendix B.

17. When counsel for the United States has received from Defendants a check payable to an aggrieved person pursuant to paragraph 15 and a signed release in the form of Appendix C from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release to counsel for Defendants. No aggrieved person shall be

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<sup>2</sup> This \$250,000 payment will be made on Defendants' behalf by Defendants' insurer, Westfield Insurance Company and Westfield National Insurance Company (hereinafter "Westfield"). Timely payment of this sum by Westfield shall satisfy all of Westfield's obligations to the United States, the aggrieved persons, and the Defendants in this matter. The United States will give Westfield a breakdown of the amounts and payee of each check.

paid until she has signed and delivered to counsel for the United States the release at Appendix C.

18. The compensation required to be paid pursuant to paragraphs 14-17 above is a debt for willful and malicious injury by Defendants of the aggrieved persons, within the meaning of 11 U.S.C. § 523(a)(6). Defendants shall not seek to discharge any part of this debt in bankruptcy.

19. Interest shall accrue on any sums that are not paid within the times mandated by paragraphs 15 and 16, as provided in 28 U.S.C. § 1961.

#### V. CIVIL PENALTY

20. Within thirty (30) days after the date of this Consent Judgment, Defendants shall issue a certified check or money order in the amount of ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000.00) to the United States Treasury as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest. Defendants shall deliver this payment to counsel for the United States, via overnight mail, at the address listed in footnote 1, above.

21. In the event that Defendants, their agents or employees engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d).

22. The civil penalty referenced in paragraph 20 is a debt is for a fine, penalty, or forfeiture payable to and for the benefit of the United States, within the meaning of 11 U.S.C. § 523(a)(7), and is not compensation for actual pecuniary loss. Defendants shall not seek to discharge any part of this debt in bankruptcy.

23. Interest shall accrue on any sums that are not paid within the time mandated by paragraph 20, as provided in 28 U.S.C. § 1961.

#### **VI. MISCELLANEOUS PROVISIONS**

24. All parties shall be responsible for their own attorney's fees and court costs, except as provided in paragraph 27, below.

25. Any time limits for performance imposed by this Consent Judgment may be extended by mutual, written agreement of the parties.

26. The underlying lawsuit filed by the United States is an action or proceeding by the United States to enforce its police or regulatory power, within the meaning of 11 U.S.C. § 362(b)(4).

#### **VII. ENFORCEMENT**

27. The parties to this Consent Judgment shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Judgment prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Judgment or in the event of any other act violating any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of such acts or deeming such acts to have been performed, and an award of any

damages, costs, and attorney's fees which may have been occasioned by the Defendants' non-actions or actions or the Defendants' violation or failure to perform.

#### **VIII. DISMISSAL**

28. This Consent Judgment shall be in effect for a period of five (5) years from the effective date. The United States' complaint in this case is dismissed with prejudice except that the Court shall retain jurisdiction for the duration of this Consent Judgment to enforce its terms. The United States may move the Court to extend the duration of the Consent Judgment in the interests of justice. The expiration of the Consent Judgment shall not extinguish or otherwise affect Defendants' debt for any unpaid portion of the monetary judgments in paragraphs 14-20 including accrued interest. Nor shall the expiration of the Consent Judgment extinguish or otherwise affect the United States' ability to collect such unpaid sums.

#### **IT IS SO ORDERED:**

This \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
SUSAN J. DLOTT  
UNITED STATES DISTRICT JUDGE

Respectfully submitted this 4<sup>th</sup> day of September, 2008.

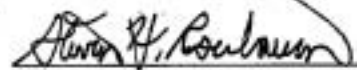
For Plaintiff:

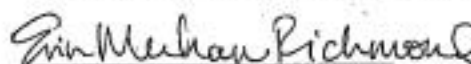
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For Defendants:



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Tel.: (513) 961-6200

  
JAMES G. MITCHELL  
LAND BARON ENTERPRISES, LLC



**APPENDIX A**

**Rental Properties Defendants owned and/or managed in and around Cincinnati, Ohio**

1. 3641 West Eighth Street, Cincinnati, Ohio 45205
2. 3507 Boudinot Avenue, Cincinnati, Ohio 45251
3. 781 Clanora Drive, Cincinnati, Ohio 45205
4. 785 Clanora Drive, Cincinnati, Ohio 45205
5. 2333-2335 West Clifton Avenue, Cincinnati, Ohio 45219
6. 1660 Crest Hill Avenue, Cincinnati, Ohio 45237
7. 1668 Crest Hill Avenue, Cincinnati, Ohio 45237
8. 2358 Harrison Avenue, Unit #31, Cincinnati, Ohio 45240
9. 2894 Harrison Avenue, Cincinnati, Ohio 45211
10. 2898 Harrison Avenue, Cincinnati, Ohio 45211
11. 6782 Harrison Avenue, Unit #90, Cincinnati, Ohio 45247
12. 915 McPherson Avenue, Cincinnati, Ohio 45205
13. 917 McPherson Avenue, Cincinnati, Ohio 45205
14. 923 McPherson Avenue, Cincinnati, Ohio 45205
15. 932 McPherson Avenue, Cincinnati, Ohio 45205
16. 726 E. Mitchell Avenue, Cincinnati, Ohio 45229
17. 730 E. Mitchell Avenue, Cincinnati, Ohio 45229
18. 1910 Fairmount Avenue, Cincinnati, Ohio 45211
19. 2520 Flanigan Court, Cincinnati, Ohio 45239
20. 2524 Flanigan Court, Cincinnati, Ohio 45239
21. 2712 North Bend Road, Cincinnati, Ohio 45239
22. 2714 North Bend Road, Cincinnati, Ohio 45239
23. 2716 North Bend Road, Cincinnati, Ohio 45239
24. 2718 North Bend Road, Cincinnati, Ohio 45239
25. 2720 North Bend Road, Cincinnati, Ohio 45239
26. 2722 North Bend Road, Cincinnati, Ohio 45239
27. 4525 Roth Avenue, Cincinnati, Ohio 45238
28. 7811 Stillwell Road, Cincinnati, Ohio 45237
29. 7821 Stillwell Road, Cincinnati, Ohio 45237
30. 7829 Stillwell Road, Cincinnati, Ohio 45237

31. 7837 Stillwell Road, Cincinnati, Ohio 45237
32. 7845 Stillwell Road, Cincinnati, Ohio 45237
33. 7851 Stillwell Road, Cincinnati, Ohio 45237
34. 2316 Victory Parkway, Cincinnati, Ohio 45206
35. 2320 Victory Parkway, Cincinnati, Ohio 45206
36. 1520 William Howard Taft Road, Cincinnati, Ohio 45206
37. 6050 Boymel Drive, Unit #1104, Fairfield, Ohio 45014
38. 3893 Mack Road, Unit #116, Fairfield, Ohio 45014
39. 13 Providence Drive, Unit #169, Fairfield, Ohio 45014
40. 13 Providence Drive, Unit #172, Fairfield, Ohio 45014
41. 13 Providence Drive, Unit #173, Fairfield, Ohio 45014
42. 750 Gordon Smith Boulevard, Hamilton, Ohio 45013
43. 836 Gordon Smith Boulevard, Unit #1, Hamilton, Ohio 45013
44. 836 Gordon Smith Boulevard, Unit #2, Hamilton, Ohio 45013
45. 1055 Saint Clair Avenue, Unit #38, Hamilton, Ohio 45015
46. 1057 Saint Clair Avenue, Unit #26, Hamilton, Ohio 45015
47. 7519 Hastings Pt, West Chester, Ohio 45069
48. 7535 Hastings Pt, West Chester, Ohio 45069
49. 7537 Hastings Pt, West Chester, Ohio 45069
50. 1260 Sliker, Cincinnati, Ohio 45205
51. 1265 Rosemont, Cincinnati, Ohio 45205
52. 2435 Mustang Drive, Unit #9, Cincinnati, Ohio
53. 836 Gordon Smith Boulevard, Unit #6, Hamilton, Ohio 45013
54. 15 E. Broadway, Lebanon, Ohio 45036
55. 33 E. Broadway, Lebanon, Ohio 45036
56. 787 Clanora Drive, Cincinnati, Ohio 45205

**APPENDIX B**

**Identified Aggrieved Persons and Amounts to be Paid**

Katherine Bodenstein	\$35,600
Teresa Fenos	\$281,240
Angela George	\$103,240
Cheryl Jackson	\$17,800
Rochelle Madaris	\$53,400
Josetta Miller	\$67,640
Shannon Rycek	\$103,240
Hilda Smith	\$17,800
Christine Stillwell	\$53,400
Kathryn Stirsman	\$35,600
Kimberly Stubblefield	\$67,640
LaToya Thomas	\$53,400

APPENDIX C

Release

In consideration for the parties' agreement to the terms of the Consent Judgment entered in United States v. James G. Mitchell, et al., Civil No. 1:07-cv-00150-SJD (S.D. Ohio), and Defendants' initial payment to me of \$\_\_\_\_\_, by Westfield Insurance Company pursuant to the Consent Judgment, I hereby agree, effective upon receipt of initial payment, to remise, release, and forever discharge any and all claims of any kind, nature or description whatsoever, related to the facts at issue in the litigation referenced above, or in any way related to that litigation, up to and including the date of execution of this release, that I may have against Defendants and their agents, employees, officers, members, heirs, executors, spouses, administrators, successors, insurers (including Westfield Insurance Company and Westfield National Insurance Company), assigns, owners, Lion Properties, LLC, or MGC Ventures, LLC. This release is not intended to waive my right to the remaining sums required by paragraphs 16-19 of the Consent Judgment.

I acknowledge and understand that, by signing this Release and accepting this payment, I am waiving any right to pursue my own legal action based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

The Release constitutes the entire agreement between Defendants and me, without exception or exclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]